

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE GENERAL HOSPITAL
CORPORATION and DANA-FARBER
CANCER INSTITUTE, INC.,

Plaintiffs,

v.

ESOTERIX GENETIC LABORATORIES,
LLC and LABORATORY CORPORATION
OF AMERICA,

Defendants.

CIVIL ACTION NO:

NOTICE OF REMOVAL OF ACTION

Pursuant to 28 U.S.C. §§1332, 1367, 1441 and 1446, defendants Esoterix Genetic Laboratories, LLC (“EGL”) and Laboratory Corporation of America Holdings, incorrectly identified in the Complaint as Laboratory Corporation of America (“LabCorp”), hereby remove to the United States District Court for the District of Massachusetts the above-styled action, currently pending as Docket No. 1884CV01657 in the Superior Court of the Commonwealth of Massachusetts, Suffolk County (the “State Court Action”) and, as grounds for removal, state as follows:

1. Plaintiff The General Hospital Corporation (“MGH”) is a Massachusetts corporation with a principal place of business in Boston, Massachusetts.
2. Plaintiff Dana-Farber Cancer Institute, Inc. (“Dana-Farber”) is a Massachusetts corporation with a principal place of business in Brookline, Massachusetts.

3. Defendant EGL is a Delaware limited liability company with a principal place of business in Burlington, North Carolina. EGL's sole member is LabCorp.

4. Defendant LabCorp is a Delaware corporation with a principal place of business in Burlington, North Carolina.

5. Plaintiffs MGH and Dana-Farber (collectively, "Plaintiffs") filed the State Court Action on or about May 30, 2018 (the "Complaint") in the Superior Court of the Commonwealth of Massachusetts, Suffolk County.

6. On June 8, 2018, Plaintiffs served Defendants' agent, Corporation Service Company, with a copy of the Summons and Civil Complaint. Attached hereto as Exhibit A are copies of the Docket Report, Civil Action Cover Sheet, Ex Parte Motion to Impound Complaint and Exhibits Thereto, Affidavit of Carolyn A. Marcotte in Support of Plaintiffs' Motion to Impound Complaint and Exhibits Thereto, Notice of Acceptance Into Business Litigation Session, Motion for Appointment of a Special Process Server, Summons, Complaint, and Returns of Service, which constitute the only "process, pleadings, and orders" in the State Court Action of which Defendants are aware.¹ See 28 U.S.C. § 1446(a).

7. This Court has original diversity jurisdiction over Plaintiffs' breach of contract, breach of implied covenant of good faith and fair dealing, violation of M.G.L. Chapter 93A, and unjust enrichment claims pursuant to 28 U.S.C. § 1332, which provides, in relevant part, that:

[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between--

(3) citizens of different States and in which citizens or subjects of a

¹ The Complaint has been redacted by Plaintiffs pursuant to their Motion to Impound. Defendants will seek leave to file the unredacted version under seal once a case number is assigned to this action.

foreign state are additional parties; and
28 U.S.C. § 1332(a)(3).

8. The citizenship of Plaintiffs MGH and Dana-Farber is diverse from the citizenship of Defendants EGL and LabCorp, in that MGH and Dana-Farber are citizens of Massachusetts and EGL and LabCorp are citizens of Delaware and North Carolina. *See* 28 U.S.C. § 1332(a)(1).

9. The amount in controversy exceeds \$75,000, exclusive of interest and costs. (*See* Declaration of Kellie Watson in Support of Defendants' Notice of Removal of Action, attached hereto as Exhibit B, at ¶ 4.) *See* 28 U.S.C. § 1332(b).

10. This Court has supplemental jurisdiction over Plaintiffs' accounting/injunctive relief and piercing the corporate veil claims pursuant to 28 U.S.C. § 1367(a), which provides that:

[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

28 U.S.C. § 1367(a).

11. Defendants' removal of the State Court Action is timely. A defendant seeking removal of an action initiated in a state court must file a notice of removal with the district court within thirty days of service of the complaint upon the defendant. *See* 28 U.S.C. § 1446(b); *see also Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 352-53, 119 S. Ct. 1322, 143 L. Ed. 2d 448 (1999). As noted in paragraph 6 above, Plaintiffs served Defendants on June 8, 2018, and this Notice of Removal is being filed within thirty days from such date. Plaintiffs also sent a copy of the Complaint to LabCorp by facsimile on May 31,

2018, and this Notice of Removal is being filed within thirty days from such date. Thus, removal is timely. *See* 28 U.S.C. 1446(b).

12. A copy of this Notice of Removal is being filed with the Clerk of the Superior Court of the Commonwealth of Massachusetts, Suffolk County, and is being served on counsel of record for Plaintiffs. *See* 28 U.S.C. §§ 1446(a),(d). The Superior Court of the Commonwealth of Massachusetts, Suffolk County, is located within this District.

Dated: Boston, MA
June 28, 2018

Respectfully submitted,
**ESOTERIX GENETIC LABORATORIES, LLC and
LABORATORY CORPORATION OF AMERICA
HOLDINGS**

By their attorneys,

CAMPBELL CAMPBELL EDWARDS & CONROY, P.C.

/s/ Christopher R. Howe

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CERTIFICATE OF SERVICE

I, Christopher R. Howe, counsel for defendants Esoterix Genetic Laboratories, LLC and Laboratory Corporation of America Holdings, hereby certify that on June 28, 2018, I electronically filed the foregoing Notice of Removal with the Clerk of the Court using the ECF system, which will send notification of such filing to all counsel of record. I also served a true copy of the above Notice of Removal by first class mail, postage pre-paid, on all parties of record.

/s/ Christopher R. Howe

Christopher R. Howe